

*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

#### INTERVENTION IN LICENSED CONVEYANCER'S PRACTICE

#### PART II

#### POWERS EXERCISABLE ON INTERVENTION

##### **Modifications etc. (not altering text)**

- C1** Powers conferred by Sch. 5 Pt. II (paras. 5-12) extended (1. 4. 1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. 53, 59(1), Sch. 8 para.13(1)(2); [S.I. 1991/608, art. 2, Sch](#); [S.I. 2004/2950, art. 2\(a\)](#)
- C2** Powers conferred by Sch. 5 Pt. II (paras. 5-12) restricted (1. 4. 1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. 53, 59(1), Sch. 8 para. 13(2); [S.I. 1991/608, art. 2, Sch](#); [S.I. 2004/2950, art. 2\(a\)](#)

#### *Money*

- 5 (1) The High Court, on the application of the Council, may order that no payment shall be made without the leave of the court by any person (whether or not named in the order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the licensed conveyancer or his firm.
- (2) No order under this paragraph shall take effect in relation to any person to whom it applies unless the Council has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank or other financial institution, has indicated at which of its branches the Council believes that the money to which the order relates is held.
- (3) A person shall not be treated as having disobeyed an order under this paragraph by making a payment of money if he satisfies the court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.
- (4) This paragraph does not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3.
- 6 (1) Without prejudice to paragraph 5, if the Council passes a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive them, shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Council on trust to exercise in relation to them the powers

*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

conferred by this Part of this Schedule and subject thereto [<sup>F1</sup>and to rules under paragraph 6B] upon trust for the persons beneficially entitled to them.

- (2) This paragraph applies—
- (a) where the powers conferred by this paragraph are exercisable by virtue of paragraph 1, to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with his practice [<sup>F2</sup>or former practice or with any trust of which he is or was a trustee],
  - (b) where they are exercisable by virtue of paragraph 2, to all sums of money in any client account; and
  - (c) where they are exercisable by virtue of paragraph 3, to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with the matter to which the complaint relates.
- (3) The Council shall serve on the licensed conveyancer or his firm and on any other person having possession of sums of money to which this paragraph applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.
- (4) Within eight days of the service of a notice under sub-paragraph (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Council and (if the notice gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the High court for an order directing the Council to withdraw the notice.
- (5) If the court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit.
- (6) If any person on whom a notice has been served under sub-paragraph (3) pays out sums of money at a time when such payment is prohibited by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.

#### **Textual Amendments**

**F1** Words in [Sch. 5 para. 6\(1\)](#) inserted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 31\(5\)\(a\)](#), (with ss. 29, 192, 193); S.I. 2009/503, [art. 2\(c\)\(i\)](#)

**F2** Words in [Sch. 5 para. 6\(2\)](#) inserted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 31\(5\)\(b\)](#), (with ss. 29, 192, 193); S.I. 2009/503, [art. 2\(c\)\(i\)](#)

- [<sup>F3</sup>6A (1) Without prejudice to paragraph 5, if the Council passes a resolution to the effect that any rights to which this paragraph applies shall vest in the Council, those rights shall vest accordingly.
- (2) This paragraph applies to any right to recover or receive debts due to the licensed conveyancer or his firm in connection with his practice or former practice.
- (3) Any sums recovered by the Council by virtue of the exercise of rights vested under sub-paragraph (1) shall vest in the Council and shall be held by it on trust to exercise in relation to them the powers conferred by this Part of this Schedule and, subject to those powers and to rules under paragraph 6B, upon trust for the persons beneficially entitled to them.

*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

- (4) The Council shall serve on the licensed conveyancer or his firm, and any person who owes a debt to which the order applies a certified copy of the Council's resolution.

**Textual Amendments**

**F3** Sch. 5 paras. 6A, 6B inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(6), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

- 6B (1) The Council may make rules governing its treatment of sums vested in it under paragraph 6 or 6A(3).
- (2) The rules may, in particular, make provision in respect of cases where the Council, having taken such steps to do so as are reasonable in all the circumstances of the case, is unable to trace the person or persons beneficially entitled to any sum vested in the Council under paragraph 6 or 6A(3) (including provision which requires amounts to be paid into or out of a fund maintained under section 21).]

**Textual Amendments**

**F3** Sch. 5 paras. 6A, 6B inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(6), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

- 7 (1) If the Council takes possession of any sum of money to which paragraph 6 applies, the Council shall pay it into a special account in the name of the Council or of a person nominated on behalf of the Council; and any such person shall hold that sum on trust to permit the Council to exercise in relation to it the powers conferred by this Part of this Schedule and subject thereto [<sup>F4</sup>and to rules under paragraph 6B], on trust for the persons beneficially entitled to it.
- (2) A bank or other financial institution at which a special account is kept shall be under no obligation to ascertain whether it is being dealt with properly.

**Textual Amendments**

**F4** Words in Sch. 5 para. 7(1) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(7), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

- 8 Without prejudice to paragraphs 5 to 7, if the High Court is satisfied, on an application by the Council, that there is reason to suspect that any person [<sup>F5</sup>(a) holds money on behalf of the licensed conveyancer or his firm, or (b) has information which is relevant to identifying any money held by or on behalf of the licensed conveyancer or his firm, the court may require that person to give the Council information as to any such money and the accounts in which it is held.]

**Textual Amendments**

**F5** Words in Sch. 5 para. 8 substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(8), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

### *Documents*

- 9 (1) The Council may give notice to the licensed conveyancer or his firm requiring the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council—
- (a) where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 1, of all documents in the possession [<sup>F6</sup>or under the control] of the licensed conveyancer or his firm in connection with his practice [<sup>F7</sup>or former practice or with any trust of which the licensed conveyancer is or was a trustee]; and
  - (b) where they are exercisable by virtue of paragraph 3, of all documents in the possession [<sup>F8</sup>or under the control] of the licensed conveyancer or his firm in connection with the matters [<sup>F9</sup>of which the Council is satisfied](whether or not they relate also to other matters).
- (2) The person appointed by the Council may take possession of any such documents on behalf of the Council.
- (3) Except in a case where an application has been made to the High Court under sub-paragraph (4), if any person having possession [<sup>F10</sup>or control] of any such documents refuses, neglects or otherwise fails to comply with a requirement under sub-paragraph (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- (4) The High Court, on the application of the Council, may order a person required to produce or deliver documents under sub-paragraph (1) to produce or deliver them to any person appointed by the Council at such time and place as may be specified in the order, and authorise him to take possession of them on behalf of the Council.
- (5) If on an application by the Council the High Court is satisfied that there is reason to suspect that documents in relation to which the powers conferred by sub-paragraph (1) are exercisable have come into the possession [<sup>F11</sup>or are under the control] of some person other than the licensed conveyancer or his firm, the court may order that person to produce or deliver the documents to any person appointed by the Council at such time and place as may be specified in the order and authorise him to take possession of them on behalf of the Council.
- [<sup>F12</sup>(5A) In the case of a document which consists of information which is stored in electronic form, the requirement imposed by a notice under sub-paragraph (1) or an order under sub-paragraph (4) or (5), is a requirement to produce or deliver the information in a form in which it is legible or from which it can readily be produced in a legible form.]
- (6) On making an order under this paragraph, or at any later time, the court, on the application of the Council, may authorise a person appointed by the Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of
- [<sup>F13</sup>(a)] any documents to which the order relates.
  - [<sup>F14</sup>(b)] any property—
    - (i) in the possession or under the control of the licensed conveyancer or his firm, or
    - (ii) in the case of an order under sub-paragraph (5), which was in the possession or under the control of such a person and has come into

*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

the possession or under the control of the person in respect of whom the order is made,

which the Council reasonably requires for the purpose of accessing information contained in such documents,

and to use property obtained under paragraph (b) for that purpose.]

- (7) The Council, on taking possession of any documents [<sup>F15</sup>or other property] under this paragraph, shall serve upon the licensed conveyancer or personal representatives and upon any other person from whom they were received on the Council's behalf or from whose premises they were taken a notice that possession has been taken on the date specified in the notice.
- (8) Subject to sub-paragraph (9) a person upon whom a notice under sub-paragraph (7) is served, on giving not less than 48 hours' notice to the Council and (if the notice gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the High Court for an order directing the Council to deliver the documents [<sup>F16</sup>or other property] to such person as the applicant may require.
- (9) A notice under sub-paragraph (8) must be given within eight days of the service of the Council's notice under sub-paragraph (7).
- (10) Without prejudice to the foregoing provisions of this Schedule, the Council may apply to the High Court for an order as to the disposal or destruction of any documents [<sup>F17</sup>or other property] in its possession by virtue of this paragraph or paragraph 10.
- (11) On an application under sub-paragraph (8) or (10), the court may make such order as it thinks fit.
- (12) Except so far as its right to do so may be restricted by an order on an application under sub-paragraph (8) or (10), the Council may take copies of or extracts from any documents in its possession by virtue of this paragraph or paragraph 10 and require any person to whom it is proposed that such documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts to the Council.

#### Textual Amendments

- F6** Words in Sch. 5 para. 9(1)(a) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(a)(i), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)
- F7** Words in Sch. 5 para. 9(1)(a) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(a)(ii), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)
- F8** Words in Sch. 5 para. 9(1)(b) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(b)(i), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)
- F9** Words in Sch. 5 para. 9(1)(b) substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(b)(ii), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)
- F10** Words in Sch. 5 para. 9(3) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(c), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)
- F11** Words in Sch. 5 para. 9(5) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(d), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)
- F12** Sch. 5 para. 9(5A) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(e), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)
- F13** Words in Sch. 5 para. 9(6) renumbered (31.3.2009) as Sch. 5 para. 9(6)(a) by virtue of Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(9)(f), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

- F14** Sch. 5 para. 9(6)(b) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 31(9)(g)**, (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**
- F15** Words in Sch. 5 para. 9(7) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 31(9)(h)**, (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**
- F16** Words in Sch. 5 para. 9(8) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 31(9)(i)**, (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**
- F17** Words in Sch. 5 para. 9(10) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 31(9)(j)**, (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**

**Modifications etc. (not altering text)**

- C3** Sch. 5 Pt. II paras. 9(2)-(12), 11, 12 applied (1. 4. 1991 for certain purposes, otherwise 7.12.2004) for limited purposes by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 53, Sch. 8 para. 21(2) (with s. 59(1)); S.I.1991/608, art. 2, Sch; S.I. 2004/2950, **art. 2(a)**

*[<sup>F18</sup>Redirection of communications]*

**Textual Amendments**

- F18** Sch. 5 para. 10 and cross-heading substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 31(10)**, (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**

- [<sup>F19</sup>10 (1) The High Court, on the application of the Council, may from time to time make a communications redirection order.
- (2) A communications redirection order is an order that specified communications to the licensed conveyancer or his firm are to be directed, in accordance with the order, to the Council, or any person appointed by the Council.
- (3) For the purposes of this paragraph—
- (a) “specified communications” means communications of such description as are specified in the order;
- (b) the descriptions of communications which may be so specified include—
- (i) communications in the form of a postal packet;
- (ii) electronic communications;
- (iii) communications by telephone.
- (4) A communications redirection order has effect for such time not exceeding 18 months as is specified in the order.
- (5) Where a communications redirection order has effect, the Council or the person appointed by the Council may take possession or receipt of the communications redirected in accordance with the order.
- (6) Where a communications redirection order is made the Council must pay to—
- (a) in the case of an order relating to postal packets, the postal operator concerned, and
- (b) in any other case, the person specified in the order,
- the like charges (if any) as would have been payable for the redirection of the communications to which the order relates if the addressee had permanently ceased to occupy or use the premises or other destination of the communications and had

*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

applied to the postal operator or the specified person (as the case may be) to redirect the communications to him as mentioned in the order.

- (7) The High Court may, on the application of the Council, authorise the Council, or a person appointed by it, to take such steps as may be specified in the order in relation to any website purporting to be or have been maintained by or on behalf of the licensed conveyancer or his firm if the High Court is satisfied that the taking of those steps is necessary to protect the public interest or the interests of clients (or potential or former clients) of the licensed conveyancer or his firm.
- (8) In this paragraph “postal operator” and “postal packet” have the meaning given by section 125(1) of the Postal Services Act 2000.
- (9) This paragraph does not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3.]

#### Textual Amendments

- F19** Sch. 5 para. 10 and preceding cross-heading substituted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 31\(10\)](#), (with ss. 29, 192, 193); [S.I. 2009/503](#), [art. 2\(c\)\(i\)](#)

#### *[<sup>F20</sup>Trusts*

#### Textual Amendments

- F20** Sch. 5 para. 10 and preceding cross-heading inserted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 31\(11\)](#), (with ss. 29, 192, 193); [S.I. 2009/503](#), [art. 2\(c\)\(i\)](#)

- 10A (1) If the licensed conveyancer or his personal representative is a trustee of a trust, the Council may apply to the High Court for an order for the appointment of a new trustee in substitution for him.
- (2) The Trustee Act 1925 has effect in relation to an appointment of a new trustee under this paragraph as it has effect in relation to an appointment under section 41 of that Act.]

#### *General*

- 11 The powers in relation to sums of money [<sup>F21</sup>, documents and other property] conferred by this Part of this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.

#### Textual Amendments

- F21** Words in Sch. 5 para. 11 substituted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 31\(12\)](#), (with ss. 29, 192, 193); [S.I. 2009/503](#), [art. 2\(c\)\(i\)](#)

#### Modifications etc. (not altering text)

- C4** Sch. 5 Pt. II paras. 9(2)-(12), 11, 12 applied (1.4 1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 53, [Sch. 8 para. 21\(2\)](#) (with s. 59(1)); [S.I. 1991/608](#), art. 2, Sch; [S.I. 2004/2950](#), [art. 2\(a\)](#)



*Status: Point in time view as at 31/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II. (See end of Document for details)*

- 12 Subject to any order for the payment of costs that may be made on an application to the court under this Schedule, any costs incurred by the Council for the purposes of this Schedule, including, without prejudice to the generality of this paragraph, the costs of any person exercising powers under this Part of this Schedule on behalf of the Council, shall be paid by the licensed conveyancer or his personal representatives and shall be recoverable from him or them as a debt owing to the Council.

**Modifications etc. (not altering text)**

**C5** Sch. 5 Pt. II paras. 9(2)-(12), 11, 12 applied (1. 4. 1991 for certain purposes, otherwise 7.12.2004) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 53, Sch. 8 para. 21(2) (with s. 59(1)); S.I.1991/608, art. 2, Sch; S.I. 2004/2950, art. 2(a)

- [<sup>F22</sup>12A(1) The High Court, on the application of the Council, may order a former partner of the licensed conveyancer to pay a specified proportion of the costs mentioned in paragraph 12.
- (2) The High Court may make an order under this paragraph only if it is satisfied that the conduct (or any part of the conduct) by reason of which the powers conferred by this Part were exercisable in relation to the licensed conveyancer was conduct carried on with the consent or connivance of, or was attributable to any neglect on the part of, the former partner.
- (3) In this paragraph “specified” means specified in the order made by the High Court.]

**Textual Amendments**

**F22** Sch. 5 para. 12A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(13), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)



**Status:**

Point in time view as at 31/03/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Administration of Justice Act 1985, Part II.